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RULEMAKING TO ESTABLISH ELECTRIC WEATHERIZATION STANDARDS	§ § §	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

COMMENTS OF VISTRA CORP. IN RESPONSE TO STAFF'S JUNE 9, 2021 REQUEST

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Vistra Corp. (Vistra) on behalf of itself and its subsidiary power generation companies files the following comments in response to the Public Utility Commission of Texas (Commission) Staff's June 9, 2021 Request for Comments.[1] These comments are timely filed.[2]

I. INTRODUCTION

Vistra supports establishing meaningful weatherization standards for generators in accordance with the Legislature's directives in Senate Bill No. 3 (SB 3) and considering lessons learned from Winter Storm Uri. Vistra also appreciates the Legislature's intention to see prompt action on this and other topics affecting the ERCOT market given the expedited timeline set out in SB 3 for a final order in this rulemaking (i.e., December 8, 2021[3]) and the other accelerated rulemakings coming out of the 87th legislative session.[4] At the same time, Vistra understands that the Commission has a tremendous amount work before it to implement these myriad legislated policies that must be carried out without a corresponding increase in resources.

Given these and other factors noted below, Vistra suggests the Commission take a general but targeted approach for the instant rulemaking that focuses on the high priority of winter weather emergency preparedness. It is not practical for the Commission to thoroughly evaluate all potential

[1] Public Notice of Request for Comments (Jun. 9, 2021).

[2] *Id.* (setting deadline for comments of June 23, 2021).

[3] 87th Tex. Leg., R.S., SB 3, § 39 (effective Jun. 8, 2021) ("Not later than six months after the effective date of this Act, the Public Utility Commission of Texas shall adopt rules necessary to implement: (1) Section 35.0021, Utilities Code, as added by this Act; and (2) Section 38.075, Utilities Code, as added by this Act.").

[4] E.g., 87th Tex. Leg., R.S., Senate Bill No. 2 (SB 2) (effective Jun. 8, 2021) (requiring implementation of requirements related to the ERCOT organization by September 1, 2021); 87th Tex. Leg., R.S., House Bill No. 16 (HB 16) (effective Sept. 1, 2021) (prohibiting wholesale indexed products and requiring certain additional contract expiration notices, which must apply to customer enrollments on or after the September 1, 2021 effective date).

options for robust preparedness for every type of conceivable weather emergency, receive and respond to comments, and adopt a thorough, optimal final rule in the six-month timeline required by SB 3. Rather, Vistra believes the Commission can and should take an iterative approach, which should start more generally and supplement with additional details as necessary.

This approach also would allow the Commission to coordinate its weatherization standards with the implementation of national standards. The North American Electric Reliability Corporation (NERC), which has nationwide authority over reliability standards (including in ERCOT[5]), has just this month approved and is seeking expedited approval from the Federal Energy Regulatory Commission (FERC) of a reliability standard dealing specifically with cold weather preparation by Generator Owners and Operators (i.e., EOP-011-2).[6] Cold weather preparation by generators is, of course, the condition that sparked the legislative activity that resulted in passage of SB 3. Consequently, the table is set for the Commission to take quick, effective action by adopting a rule that requires owners of generation assets to comply with the requirements of NERC's proposed new reliability standard EOP-011-2 while still subject to Commission oversight and enforcement. While that rule is still pending FERC approval, once that standard is approved by FERC and takes effect the Commission can expediently supplement with any additional measures required by FERC or as the Commission determines to be appropriate, informed by the experience gained under implementation of EOP-011-2.

II. RESPONSE TO STAFF QUESTIONS

QUESTION: *To fulfill the requirements of Texas Utilities Code § 35.0021(b), under what weather emergency conditions should the Commission require a provider of electric generation service in the Electric Reliability Council of Texas (ERCOT) power region to be able to operate its generation facilities? At a minimum, please address standards for temperature, icing, wind, flooding, and drought conditions.*

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[5] 16 U.S.C. § 824o.

[6] The NERC Board of Trustees approved the proposed standard (i.e., EOP-011-2) at their June 11, 2021 meeting and, on June 17, 2021, posted to the NERC website a petition to file with FERC that seeks expedited review and approval of the standard; if approved by FERC, the standard will take effect the first day of the first calendar quarter that is eighteen months following FERC approval: https://www.nerc.com/FilingsOrders/us/NERC%20Filings%20to%20FERC%20DL/Petition%20for%20Approval%20of%20Cold%20Weather%20Standards_2019-06.pdf. EOP-011-2 adds Generator Owners and Operators to EOP-011 and creates a list of new substantive requirements for those entities; version 1 of the standard (i.e., EOP-011-1), which is in effect currently, applies only to Balancing Authorities, Reliability Coordinators, and Transmission Operators.

First, it is important to note that newly adopted Section 35.0021(b) of the Public Utility Regulatory Act (PURA)[7] sets a preparedness standard, and does not set an operational performance standard except for repeat or major issues (in which case the solution is better preparation). The text of new PURA § 35.0021(b) directs the Commission to, by rule, "require each provider of electric generation service . . . to implement measures **to prepare the provider's generation assets** to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the commission."[8] Thus, the Legislature specified that the rule is to require each generator "to implement measures to prepare," and as a result, the proper focus of the rule is on establishing what preparatory efforts must be reasonably undertaken, rather than identifying particular weather conditions in which a generator must be able to operate.

That understanding of the Legislature's directive is bolstered by the statute's enforcement provisions in Sections 35.0021(c) and (g), each of which expressly requires that a non-compliant generation asset owner be given "a reasonable period of time" to remedy any violation identified during ERCOT's required inspections for compliance with these adopted standards:

> (c) The independent organization certified under Section 39.151 for the ERCOT power region shall:
>
> (1) inspect generation assets in the ERCOT power region for compliance with the reliability standards;
>
> (2) provide the owner of a generation asset with a **reasonable period of time in which to remedy any violation** the independent organization discovers in an inspection;[9] ...
>
> (g) The commission shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a rule adopted under this section and **does not remedy that violation within a reasonable period of time.**[10]

The Legislature wisely established a preparation requirement, which can be measured, monitored, and improved upon by adopting better planning and pre-emergency action

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[7] Tex. Util. Code §§ 11.001-66.016 (PURA).

[8] Emphasis added.

[9] Emphasis added.

[10] Emphasis added.

requirements, as specified by reliability standards such as NERC's proposed new EOP-011-2. Furthermore, as demonstrated during Winter Storm Uri, actual operational performance can be dramatically (and devastatingly) affected by actions wholly outside a generator's control—such as the failure of fuel delivery infrastructure, frequency events, and mechanical issues unrelated to the weather. A rule that requires generators to control what they can control is the logical approach that is also consistent with the Legislature's direction to the Commission and would be achieved by adoption of a standard directing compliance with EOP-011-2 as a prudent first step.

Vistra suggests the primary focus of this rule should be on preparation for statewide extreme winter conditions, which are the conditions that prompted this legislation (i.e., SB 3) in the first place and that can be reasonably addressed in the expedited rulemaking timeframe. It is equally important to recognize the limited levers that generators have available to prepare for such conditions. While preparation for any potential extreme weather conditions might theoretically be helpful to grid reliability, the reality is that each unit's original design specifications are its controlling baseline. Investment of incremental capital and operational preparedness certainly can augment an existing unit's ability to deal with weather extremes, but only on an incremental basis and cannot alter the unit's fundamental design. While the Commission may wish to establish design standards that would apply to new capacity, for existing units such a policy must balance against whether such an investment might be uneconomic, prompting a generator to consider whether to make that investment at all (if it were required to do so to comply with the rule) or mothball or retire the unit.

Accordingly, as the Commission evaluates the various parameters of weather emergency preparation, it is important to keep in mind what is feasible and to use that to inform what is actually achievable. The ideal policy would maximize the probability-weighted available megawatts of generating capacity during Winter Storm Uri-like conditions at market equilibrium, taking into account the other market reforms that the Commission must implement as a result of SB 3.

QUESTION: For each, please address whether the standard should vary by region or by type of generation facility.

With respect to type of generation facility, preventative (preparatory) measures should vary as appropriate on a technology-specific basis, taking into account the design specifications of the

particular technology type and model. Necessarily, certain types of facilities might require different supplies, maintenance, and operational readiness activities for extreme weather conditions (like extreme cold), and it is appropriate for the rule to recognize those inherent differences in technologies. With that said, to the extent possible, preparation requirements should be competitively neutral.

With respect to variance by region, preparation standards for extreme cold (and heat) should recognize that extreme temperatures can and do occur on a statewide rather than regional basis, as they did in Winter Storm Uri, and thus the applicable standards for such extreme events should be uniform throughout the state – or at a minimum, be reflective of the minimal variation during statewide extreme weather events. The statewide extreme temperature events are the ones that create the greatest reliability risk, as was experienced in Winter Storm Uri and in the February 2011 extreme winter weather event (i.e., the most recent prior event of remotely similar magnitude). Thus, those are the types of weather conditions (i.e., statewide extreme cold temperatures) that should be the focus of the rule. Other types of weather risks, such as hurricanes, tornadoes, flooding, or other events, could reasonably be considered more locally or geographically, as those risks vary dramatically. But those types of events should not be the focus in this initial rulemaking, given the accelerated timeline and the clear legislative priority of ensuring that Texans do not experience another load shed event like Winter Storm Uri.

QUESTION: Please provide any relevant support for your recommendations, including existing or proposed standards in other jurisdictions, or related studies.

The fundamental foundation for the Commission's focus on weather-emergency-preparedness should be the proposed cold weather preparedness requirements developed by NERC for Generator Owners and Operators, for which NERC is seeking expedited FERC approval.[11] As NERC states in its application for FERC approval: "The proposed Cold Weather Reliability Standards mark an important milestone in NERC's longstanding efforts to reduce the risks posed

[11] *Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards EOP-011-2, IRO-010-1, and TOP-003-5*, FERC Docket No. [pending] (dated Jun. 17, 2021) (hereafter, NERC Petition). *Supra also* note 6. Note that the petition also requests approval of two additional standards, IRO-010-1 and TOP-003-5, which effectuate the requirements to communicate cold weather preparedness information to the Reliability Coordinator, Transmission Operator, and Balancing Authority for use in their analyses and planning. Given the focus on requirements for generators in this request, these comments focus primarily upon EOP-011-2 but not to the exclusion of the other provisions in the NERC Petition.

by cold weather to the reliability of the Bulk-Power System."[12] More specifically, NERC states that "the proposed Cold Weather Reliability Standards contain new and revised requirements that would require Generator Owners to implement plans to prepare for cold weather and to provide certain generator cold weather operating parameters to the Reliability Coordinator, Transmission Operator, and Balancing Authority for use in their analyses and planning."[13] Thus, the new NERC standard, which has the benefit of having already been subject to significant analysis and review, seeks to accomplish precisely what the Commission will be seeking to accomplish in this rulemaking as it relates to cold weather preparedness in the wake of the terrible Texas experience during Winter Storm Uri. Accordingly, the Commission should found its rule upon mandating compliance with NERC's pending new EOP-011-2 reliability standard, which is wholly consistent with the Legislature's and the Commission's goals and leverages the nationwide reliability expertise contained within NERC.

Adopting a rule that is built upon adherence with the new NERC standard will promote compliance because it will allow leverage of nationwide standards and experience to be brought to bear in Texas, allowing Texas generators to learn from generator best practices in regions with more consistent cold weather and also allow engineers and contractors to apply technical and construction methods that have been or will become standardized across the country. Thus, the target will be well-defined and more efficient than if Texas developed a standard materially different from NERC's standard.

Notably, the new NERC standard will apply to generators in ERCOT one way or another—because of NERC's nationwide reliability authority.[14] Thus, to avoid establishing two sets of standards that might conflict or pile up needless additional requirements on generators with little to no added benefit to Texans, the Commission should focus on compliance with NERC's EOP-011-2 as the foundational requirement of its rule. Doing so does not prevent the Commission from establishing additional requirements; it merely seeks to align overlapping policies that will be implemented on similar timeframes.

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[12] NERC Petition at 1.

[13] *Id.* at 4-5. As noted *supra* note 6, the currently-effective standard regarding cold weather preparedness applies only to Balancing Authorities, Reliability Coordinators, and Transmission Operators. See also *supra* note 11.

[14] *Supra* note 5.

III. ADDITIONAL COMMENTS

A. Implementation Timing

The new statute specifies twice (in Sections 35.0021(c)(2) and (g)) that generation asset owners are to have a "reasonable" time to achieve compliance, following an inspection by ERCOT for compliance with the Commission's rule. Section 39 of SB 3 also directs the Commission to establish its weather-emergency-preparation rule within six months after the bill took effect (i.e., on June 8, 2021, which makes the deadline for the rule adoption December 8, 2021). To account for those requirements, the first ERCOT compliance inspections will need to allow for a reasonable initial compliance timeframe after the Commission adopts the rule that establishes the weather preparation requirements, and generators will need an additional reasonable time to address any deficiencies identified by ERCOT in that first inspection. Generators may need to do work during planned outages, which will need to be distributed over time to avoid inadvertently jeopardizing reliability during outage season. As one reference point, the pending NERC cold weather preparedness standards application with FERC requests an effective date approximately 18 months following FERC approval. As urged above, any cold-weather preparedness requirements should conform to and not conflict with the NERC weatherization standards (if they are approved by FERC), and it would achieve efficiencies for generators to implement those standards in tandem to the extent possible.

B. Evidence of Compliance

The Commission's rule should set general objectives and preventative measure standards, but specific technical (and technology-specific) acceptable measures for demonstrating compliance with those standards should be established in the ERCOT Protocols. As noted, new Section 35.0021(b) directs the Commission to, by rule, require owners of generation assets to implement measures to prepare their assets to provide adequate service during a weather emergency. Then, Section 35.0021(c) directs the ERCOT organization to conduct inspections of the generation assets, identify any violations, and report any violation to the Commission. Thus, consistent with that statutory framework of responsibilities, the Commission should establish the general requirements to implement weatherization measures, and ERCOT should establish in its Protocols (or other binding documents) the particular weather-preparation actions that must be

accomplished at each generation facility. Under SB 2,[15] the Commission will approve any new requirements adopted by ERCOT in any event, but the format and expertise of the stakeholder process at ERCOT is more conducive to the highly technical and technology-specific factors that both generators, ERCOT, and ultimately the Commission will rely upon for determining compliance.

C. Periodic Third-Party and Internal Inspections

In addition to the compliance inspections required by SB 3, periodic third-party inspections could be appropriate. New Section 35.0021(c) requires ERCOT to conduct compliance inspections of generation facilities, prioritized "based on risk level." New Section 35.0021(d) requires generation providers with a generation asset that experiences repeated or major weather-related forced interruptions of service to contract with a third party to assess the generation provider's weatherization plans, procedures, and operations, which assessment must then be provided to the Commission and ERCOT.

Under the pending NERC EOP-011-2 standard, the asset owner would be required to inspect each of its facilities' freeze protection measures, and some of these measures are already reported to ERCOT through Emergency Operations Plan submissions. Consistent with the approach envisioned by SB 3, however, ERCOT should strive to inspect each facility at least once within a reasonable timeframe (e.g., every five years), and a successful inspection should be treated as an absolute defense for compliance. Additionally, there may be other qualified third-party inspections (such as through NERC or the Texas Regional Entity, or through a contracted outside auditor) that the Commission should also accept as an absolute defense in between formal ERCOT inspections.

D. Competitive Market Health and Resource Adequacy

Finally, as it considers what actions to require by generation assets owners, the Commission will be wise to also keep in mind the health of the ERCOT competitive power market and the need for ongoing resource adequacy. While it might be tempting to require uniform measures at all generation facilities, application of that approach could render an already

[15] 87th Tex. Leg., R.S., SB 2, § 3 (effective June 8, 2021) (revising PURA § 39.151(d) to require that any rules adopted by ERCOT not take effect until approved by the Commission).

marginally economic unit uneconomic, thus harming the competitive market and resource adequacy. Furthermore, the Commission should balance whether certain requirements for cold weather preparedness have a corresponding reduction in summer output. It is certainly desirable to have robust units that can perform adequately in all types of weather emergencies. But if attaining that standard actually removes or reduces capacity from the market due to the costs of the weather preparedness requirements, then some balancing of the requirement versus economic reality will be prudent, so that more, not less, capacity is available to serve Texans.

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Respectfully submitted,

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(with permission)

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